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EQUITABLE CONVERSION.¹

VII.

WHAT is the duration of an indirect equitable conversion of land into money or of money into land? It is the same as that of the contract, trust, or duty which brings it into existence, or, more strictly, it is the same as that of the right, which such contract, trust, or duty creates, to have an actual conversion made, and to receive some portion of the money or land into which the actual conversion is to be made, or some limited interest in such money or land; and the duration of this right is not always the same as that of the contract, trust, or duty which creates it, as the latter may be conditional, *i. e.*, subject to a condition precedent, and in that case the right is not created until the condition is performed or satisfied. A distinction must, however, be made between a contract, trust, or duty which is conditional and one which is not to be performed till a future day, for the mere fact that a contract, trust, or duty is not to be performed till a future day does not prevent or delay the creation of a right,—it merely renders the right incapable of being enforced until the time arrives when the contract, trust, or duty is to be performed. If, indeed, an indirect equitable conversion were an equitable substitute for an actual conversion, *i. e.*, if it were an equitable exchange of money for land or land for money, it would follow that a contract, trust, or duty to make an actual conversion at a future day could not cause an equitable conversion before that day arrived; but, as an equitable conversion merely causes the right to have an actual conversion made

¹ Continued from 19 HARV. L. REV. 249.

to devolve as the thing into which the conversion is to be made would devolve, if the conversion had been actually made, it is plain that the equitable conversion should come into existence as soon as the right is created. If, therefore, land be conveyed by deed in trust to sell the same, and dispose of the proceeds as directed by the deed, the equitable conversion will take effect on the delivery of the deed, though the sale be not to be made till the grantor's death.¹

As a deed takes effect the moment that it is delivered, while a will takes effect the moment the testator dies, it follows that, in the absence of any suspensive condition, there will be a corresponding difference in the time when an equitable conversion will take effect, according as it is created by a deed or by a will, *i. e.*, that, if created by a deed, it will take effect on the delivery of the deed, and consequently during the lifetime of the person who creates it, while, if created by will, it will not take effect till the moment of the testator's death.²

There being, then, no room for doubt as to when an indirect equitable conversion begins, the only remaining question upon which the duration of such a conversion depends is, when does it end? This question, however, is much wider and incomparably more difficult than the question when does it begin, and the answer to it is also much less certain. There is, indeed, a limit of time beyond which it is not possible that any indirect equitable conversion should endure, namely, the time when the right which brought it into existence is extinguished by a performance of the correlative obligation or duty. It seems possible also, upon principle, to go a step further by saying that no equitable conversion can endure after the contemplated actual conversion is made, for an equitable conversion is always and necessarily superseded by the actual conversion in contemplation of which the equitable conversion was created. Moreover, though the right which brought the equitable conversion into existence may not be entirely extinguished, yet its nature will then be changed. Thus, in the case of the ordinary contract for the purchase and sale of land, if the vendor convey the land without requiring the concurrent payment of the purchase money, his land will thereby be actually converted into money, and, though the vendor will still be entitled to receive the money from

¹ See *Clarke v. Franklin*, 4 Kay & J. 257. And see 19 HARV. L. REV. 29, n. 2.

² *Elliott v. Fisher*, 12 Sim. 505. See also the judgment of Wigram, V. C., in *Griffith v. Ricketts*, 7 Hare 299, 311-312.

the purchaser, yet his right to receive it will have undergone a radical change, the relations between the parties to the contract having ceased to be those of vendor and purchaser and having become that of debtor and creditor. So if the purchaser voluntarily pay the purchase money without requiring a concurrent conveyance of the land, his money will thereby be actually converted into land, and, though the purchaser will still be entitled to receive a conveyance of the land from the vendor, yet his right to receive it will have become that of an equitable owner of the land, and, in fact, the contract which caused the equitable conversion, as also in the case previously put, will have come to an end. So if a covenant be made, or a trust be created to lay out money in the purchase of land, and to settle the land, and the land be purchased, the money will be actually converted into land, and though the person or persons in whose favor the settlement was to be made will still be entitled to have it made, yet he or they will be so entitled, not by virtue of the original right created by the covenant or trust, but by virtue of an equitable ownership of the land purchased, coextensive with the legal ownership which he or they would have acquired if the settlement had been made. Finally, if a duty be created to purchase and settle land, for example, if a testator direct his executor to lay out money in the purchase of land and to settle the land, and the executor purchase the land and receive a conveyance of it, the money will be thereby actually converted into land, and the duty imposed upon the executor will be performed, the legal title to the land will have vested in him, and he will hold it as a trustee for those in whose favor the settlement was directed to be made.

How may an indirect equitable conversion be ended without any performance of the contract, trust, or duty by which it was brought into existence? In the case of a contract for the purchase and sale of land, the equitable conversion in favor of each party to the contract will come to an end whenever the contract comes to an end, and how the contract may be brought to an end without being performed is a question which belongs to the subject of contracts rather than to that of equitable conversion. The equitable conversion in favor of either party will also be ended by a total breach of the contract by him, or by his losing the right to enforce the specific performance of it.

An equitable conversion created by a covenant, trust, or duty to purchase and settle land, is seldom put an end to in either of the

modes mentioned in the last paragraph. It is, however, liable to be put an end to otherwise than by a performance of the covenant, trust, or duty, and that, too, in modes which are peculiar to this class of covenants, trusts, and duties, and which constitute an important branch of equitable conversion.

Such an equitable conversion will be put an end to by the complete exhaustion of the gift or gifts which are made, or covenanted to be made, of the land to be purchased. As no such equitable conversion can come into existence without some such gift or gifts, it necessarily follows that there will cease to be any such conversion when there ceases to be any such gift; and this proposition rests upon authority, as well as upon principle, in the case of a covenant to purchase and settle land,¹ though, in the case of a trust or duty created by will for the same purpose, the authorities do not recognize the necessity of any gift of the land to be purchased either to cause an equitable conversion or to keep it in existence.² This, however, is not because the two cases differ at all in principle, but because the authorities applicable to the one case differ from those applicable to the other.

How is the exhaustion of such gift or gifts liable to happen? By the death, or the death and failure of issue of all the persons in whose favor they are made. When the equitable conversion is caused by a covenant to purchase and settle land, the settlement covenanted to be made is generally limited to estates for life and estates tail, the ultimate reversion in fee simple being retained by the settlor, while, in the case of a trust or duty created by will for the same purpose, the settlement directed generally extends to the entire fee simple. This difference, however, in the extent of the settlement, does not affect the extent of the equitable conversion, which in either case will extend only to the estates for life and estates tail covenanted or directed to be limited, for, in respect to the equitable conversion, it is not at all material whether the ultimate fee simple in the land to be purchased be retained by the settlor as a reversion, or be limited to someone else by way of remainder. If it be retained by the settlor, he will be the absolute owner of the money to be laid out subject only to the rights of those in whose favor estates for life or estates tail are to be limited. So long as there exists any person, who in case the money be laid

¹ See 18 HARV. L. REV. 264.

² 19 HARV. L. REV. 24, proposition 8.

out will be entitled to have the land conveyed to him for an estate for life or in tail in possession, that person alone will be entitled to require land to be purchased with the money and settled. When there ceases to be any such person, the right of the settlor to the money will be absolute, and though he, or anyone in whom his right shall be vested, will be entitled to purchase land with the money if he chooses, it will be by virtue of his absolute ownership of the money, and not by virtue of any relative right, and it is a relative right alone that can cause an equitable conversion.¹ Moreover, what is thus true of a settlor who retains the ultimate fee simple of the land to be purchased, is also true of a remainderman to whom such ultimate fee simple shall be covenanted or directed to be limited.² The conclusion, therefore, is that every equitable conversion caused by a covenant, trust, or duty to lay out money in the purchase of land, and to settle the land, will necessarily come to an end as soon as there ceases to be any person who is entitled to have the money laid out in the purchase of land, and to have the land conveyed to him for an estate for life or in tail in possession.

The equitable conversion caused by a covenant, trust, or duty to lay out money in the purchase of land and to settle limited interests in the land, will also come to an end whenever any person shall acquire an absolute ownership of the money, though such limited interests covenanted or directed to be settled in the land to be purchased be not exhausted; and such absolute ownership of the money may now³ be acquired by any person, of full age and *sui juris*, who is entitled to an estate tail in possession in the land to be purchased, and to have the same purchased immediately. How may such a person acquire an absolute ownership of the money? The answer to that question involves a little history. Prior to the time of Lord Chancellor Cowper, the Court of Chancery would decree the payment of it to him upon his filing a bill for that purpose.⁴ The theory upon which this was done was that, if the land were actually purchased, he could convert his estate

¹ 18 HARV. L. REV. 248, 250, 260-261.

² In 18 HARV. L. REV. 268, I erroneously stated that, in the case of a trust to purchase land and convey the same to "A for life, remainder to B in tail, remainder to C in fee, there will be a conversion in equity of the entire interest in the money into land."

³ See 3 & 4 Wm. IV. c. 74.

⁴ *Per Vernon, arguendo*, in *Chaplin v. Horner*, 1 P. Wms. 483, 485; *per Lord Hardwicke* in *Cunningham v. Moody*, 1 Ves. 174, 176.

tail into an estate in fee simple by suffering a common recovery; and, as a recovery could not be suffered of money, though converted in equity into land, equity was bound to provide some substitute for it, and that a bill in equity was the only substitute that equity could provide. Lord Cowper, however, refused to allow such a bill,¹ thinking it an infringement of the rights of those who might become entitled to the land by way of remainder or reversion expectant on the termination of the estate tail in question, and the rule thus established was followed till the end of the eighteenth century, when the old rule was restored by Lord Eldon's Act,² and the court was also authorized to grant the relief upon petition without the filing of a bill. That Act remained in force until it was superseded by 7 Geo. IV.,³ which, however, differed from Lord Eldon's Act only in being more comprehensive. The latter Act was in turn superseded by 3 and 4 Wm. IV.,⁴ which introduced very radical changes.

The substitute for common recoveries which was originally adopted by the Court of Chancery, and restored by Lord Eldon's Act was, like common recoveries themselves, open to two very serious objections, namely, first, it required a considerable amount of time to carry it through, and in the meantime the person on whose behalf the bill or petition was filed might die, and thus his purpose be wholly defeated. His loss would, of course, be the gain of the person next entitled, but it would be a gain for which he would be indebted solely to accident, and to which he would have no claim in justice. Secondly, the filing of a bill and obtaining a decree thereon was attended with a relatively great and unnecessary expense. Common recoveries being also open to the same two objections in at least an equal degree, they were abolished by 3 and 4 Wm. IV. c. 74, and disentailing deeds substituted in their place. Moreover, by section 71 of the same Act, a disentailing

¹ *Colwall v. Shadwell*, stated by Lord Parker in *Short v. Wood*, 1 P. Wms. 470, 471, and by Vernon, *arguendo*, in *Chaplin v. Horner*, 1 P. Wms. 485. It does not appear in what year *Colwall v. Shadwell* was decided. It could not, however, have been earlier than 1714, as Cowper did not become Lord Chancellor until September of that year. The case of *Benson v. Benson*, Mich., 1710, 1 P. Wms. 130, before Sir John Trevor, M. R., was therefore correctly decided in accordance with the old rule, though the learned judge seems to have made the singular mistake of supposing that a common recovery would not have been necessary to make the plaintiff the absolute owner in fee simple of the land to be purchased, and that a fine would have been sufficient. See also *Collet v. Collet*, 1 Atk. 11; *Calthrope v. Gough*, 4 T. R. 707, n. a.

² 39 & 40 Geo. III. c. 56.

³ c. 45.

⁴ c. 74.

deed was provided as a substitute for a bill or petition in equity in case of money converted in equity into land, *i. e.*, it was provided that a disentailing deed of assignment of the money, executed and delivered by a person entitled to have the money laid out in the purchase of land, and to have the land conveyed to him for an estate tail in possession, should transfer the absolute ownership of the money.

Suppose one A to have been entitled, prior to the Act just referred to, to have money laid out in the purchase of land, and to have the land conveyed to him for an estate tail in possession, with remainder, immediately expectant on the termination of such estate tail, to him in fee, or that he otherwise acquire the right to have the remainder or reversion in fee expectant on the termination of his estate tail, conveyed to him: It would still be true that A would not be the absolute owner of the money, as the estate tail would not merge in the remainder or reversion in fee.¹

¹ There are, however, one or two authorities, in the first half of the eighteenth century, which it seems impossible to reconcile either with the other authorities or with principle. Thus, in *Edwards v. Countess of Warwick*, 2 P. Wms. 171, where, by marriage settlement, the intended husband covenanted that £10,000, part of the intended wife's marriage portion, should be laid out in the purchase of land, and that the land should be settled on himself for life, remainder to the first and other sons of the marriage, successively, in tail male, remainder to himself in fee, and the husband afterwards died, leaving one son, issue of the marriage, who attained twenty-one, but died soon after without issue and intestate, Lord Macclesfield said (p. 174): "If there had been so much as a parol direction from the last Lord Warwick, for the payment of this £10,000 to his mother the Countess dowager, I should have had a regard to it; being of opinion that it was in the election of the last Earl to have made this money, or to have disposed of it as money." If the money had been laid out in land, as the last Lord Warwick would have been tenant in tail male of the land, with remainder to himself in fee, he could, by levying a fine, have made himself tenant in fee simple absolute. So also, though no fine were levied, his estate tail would have expired on his death without issue male, and his remainder would have become a fee simple in possession, and therefore he might have devised the land in fee simple, and the devise would have taken effect according to its terms, and, if he had conveyed away his remainder by deed, it would have become a fee simple in possession in the grantee at the moment of the grantor's death; but the only way in which the last Lord Warwick could have made himself tenant in fee simple in possession of the land during his own life would have been by levying a fine, as stated in the text. It follows, therefore, that the only way in which he could make himself the absolute owner of the £10,000 during his life was by filing a bill and obtaining a decree for the payment of it to him; for, if he had obtained payment of it to himself without a decree, and had died, leaving a son, the latter could have required the money to be laid out in land for the purposes of the settlement, even though the father had disposed of it during his life. What Lord Macclesfield said, however, was only a *dictum*, no such case being before him. But so much cannot be said of the case of *Trafford v. Boehm*, 3 Atk. 440, where a woman, about to marry, assigned money to trustees in trust to lay the same out in

On the other hand, A could put an end to his estate tail without suffering a common recovery, *i. e.*, he could, by levying a fine convert his estate tail into a base fee, which, by uniting with the remainder or reversion in fee, would form a fee simple absolute. A fine could not be levied, however, any more than a recovery could be suffered, of money, even though it were converted in equity into land.¹ Would then the Court of Chancery decree payment of the money to A on his filing a bill for the purpose of obtaining such payment? So long as that court held such a bill to be an adequate substitute for a common recovery, it followed, *a fortiori*, that it must be held to be an adequate substitute for a

land, and to settle the land on her intended husband and herself for their respective lives and the life of the survivor, remainder to the first and other sons of the marriage successively in tail male, remainder to the daughters of the marriage as tenants in common in tail general, remainder to the survivor of husband and wife in fee, and there were several children of the marriage, and, the wife being dead, and the money not having been laid out in land, and being in the husband's possession, who (as the Lord Chancellor said) regarded it as absolutely his own, he gave the same by his will to his eldest son, giving legacies also to his other children; and, after his death, all the children accepted the legacies given to them in full of all claims against their father's estate, and discharged his executors; and Lord Hardwicke held that these acts barred the claims, not only of all the other children under their mother's settlement, but of their issue as well, and made the eldest son the absolute owner of the money.

On the death of the father, his eldest son became entitled, under his mother's settlement, to have the money in question laid out in land, and to have the land conveyed to him in tail male in possession, remainders over in tail to his brothers and sisters, and he was also entitled, under his father's will, to have the ultimate remainder in fee in the land conveyed to him, and therefore he might have made himself the absolute owner of the money by filing a bill, making all his brothers and sisters defendants thereto, and obtaining a decree for the payment of the money to him, but it is not perceived how his possession of the money could, without a decree, affect the rights of the issue of his brothers and sisters. Lord Hardwicke says the fact that he already had the money in his own hands precluded his filing such a bill as I have mentioned. That difficulty was one, however, which he had to meet the best way he could, for example, by returning the money (which he had no right to the possession of) to his mother's trustees. Lord Hardwicke also says a court of equity decrees to a party only what he is entitled to before the decree is made. If, however, the bill and the decree in question served as a substitute for a fine, it follows that they constituted an exception to Lord Hardwicke's rule, and would have created a new right in the plaintiff.

It may be added that the eldest son died without issue about six years after the death of his father and about six years before Lord Hardwicke's decision, and, about twenty months after the death of the eldest son, the second son died, leaving an infant son. The latter was, therefore, under his grandmother's settlement, entitled, on the death of his father, to have the money in question laid out in land, and to have the land conveyed to him in tail male in possession, and, of course, he was not bound by any of the acts which Lord Hardwicke held to have barred his right, even if he was living when those acts were performed.

¹ See 19 HARV. L. REV. 240, n. 1.

fine. When, however, Lord Cowper had successfully established the rule that a bill in equity was not a substitute for a common recovery, did it or not follow that it was not a substitute for a fine? That question appears to have first arisen in a case,¹ before Lord Cowper's immediate successor, Lord Chancellor Parker (afterward Lord Macclesfield), and was decided by him in the negative, particular stress being laid upon the fact that a recovery could be suffered only in term time, while a fine could be levied equally well in vacation; and, though his immediate successor, Lord King, persistently refused² to follow his decision, yet the authority of the latter was fully restored by Lord King's successors,³ and it was not only followed until the passage of Lord Eldon's Act, but furnished the rule which that Act applied by analogy to cases in which a common recovery would be necessary. Finally, 3 and 4 Wm. IV. c. 74,⁴ in providing for cases in which money was converted into land in equity, made no distinction between those cases in which, if land had been purchased, a common recovery would have been necessary to convert an estate tail in the land into an estate in fee simple, and those in which a fine would have been sufficient.

Whenever the execution of a disentailing deed of assignment of money converted in equity into land now has the effect of making the person in whose favor it is executed the absolute owner of the money, there is no doubt that it also has the effect of putting an immediate end to the equitable conversion. So also whenever a decree or order of a court of equity for the payment, to a person named, of money converted in equity into land formerly had the effect of making such person the absolute owner of the money, there is no doubt that it also had the effect of putting an immediate end to the equitable conversion. I have hitherto assumed also that the mere fact of any person's becoming the absolute owner of

¹ *Short v. Wood*, 1 P. Wms. 470.

² *Eyre's case*, 3 P. Wms. 13; *Onslow's case*, reported by Mr. Cox in his note to *Eyre's case*.

³ In the note just referred to, published in 1787, Mr. Cox says: "The present practice conforms to the Lord Parker's opinion." In *Ex parte King*, 2 Bro. C. C. 158, decided in the same year, Lord Thurlow says (p. 160): "Where a man has a life estate in money, remainder to the heirs of his body, remainder to himself in fee, as he could, if the estate was in land, obtain the absolute interest by levying a fine, the court would order the money to be paid to him, though it would not where a recovery was necessary." Finally, the recitals in Lord Eldon's Act state the then existing practice with great fulness and in entire accordance with Lord Parker's decision, *supra*.

⁴ S. 71.

money converted in equity into land has the immediate effect of putting an end to the equitable conversion. The courts, however, do not so hold. They say the reason why the execution of a disentailing deed or the obtaining of a decree or order of a court of equity has the effect of putting an immediate end to the equitable conversion is that, besides making the person executing the deed or obtaining the decree or order the absolute owner of the money, it shows an intention on his part to put an end to the equitable conversion, and they hold such an intention to be necessary. Therefore, they lay down for a rule that in order to put an end to the equitable conversion there must not only be an absolute ownership of the money, but such owner must elect¹ not to have the money converted into land.

What is the theory upon which this view rests? Evidently it is the theory that an equitable conversion is, like an actual conversion, a thing done, and that, as personal property which is actually converted into real property will continue to be real property until it is actually reconverted into personal property, so personal property which is converted in equity into real property must continue to be real property in equity until equity reconverts it into personal property. Accordingly, the courts of equity constantly say that money which is converted in equity into land is *impressed by equity* with the quality of land, and they constantly assume that the impression so made must remain until it is removed by the same authority by which it was made. This theory, however, proceeds upon a false analogy. 1. An equitable conversion is not a thing done, but is a mere consequence deduced by equity from a thing agreed or directed to be done, and therefore it will continue to exist only so long as the agreement or direction which brought it into existence remains in force. 2. The theory erroneously assumes that a covenant or direction to lay out money in the purchase of land, and to settle the land, converts the money in equity directly into land, whereas it merely creates one or more rights to have the covenant or direction performed, and equity causes such a right to devolve, on the death of its owner, as the land would

¹ *Lingen v. Souroy*, 1 P. Wms. 172; 10 Mod. 39; *Crabtree v. Bramble*, 3 Atk. 680; *Bradish v. Gee*, Amb. 229; *Biddulph v. Biddulph*, 12 Ves. 161; *Kirkman v. Miles*, 13 Ves. 338; *Davies v. Ashford*, 15 Sim. 42; *Harcourt v. Seymour*, 2 Sim. N. S. 12; *Dixon v. Gayfere*, 17 Beav. 433; *Griesbach v. Freemantle*, 17 Beav. 314; *Brown v. Brown*, 33 Beav. 399; *Sisson v. Giles*, 3 DeG., J., & S. 614, 9 Jur. N. S. 512, 951; *Meredith v. Vick*, 23 Beav. 559; *Mutlow v. Bigg*, 1 Ch. D. 385; *Meek v. Devenish*, 6 Ch. D. 566; *In re Gordon*, 6 Ch. D. 531.

have devolved if the conversion had been actually made; and therefore it is not possible that there should be any equitable conversion after there has ceased to be any such right, and it is not possible that any such right should continue to exist after the covenant which created it has ceased to exist, or after the direction which created it has ceased to be in force. 3. The courts have acted inconsistently in holding that an equitable conversion of money into land will continue to exist, notwithstanding that a single person has become the absolute owner of the money, and yet that an election by such owner not to have the money actually converted into land will instantly put an end to the equitable conversion, for that is to hold that the continuance of an equitable conversion ultimately depends upon the will of the person in whose favor alone it exists, and yet it is as clear as anything in law can be that the mere will of the owner of property as to what shall or shall not be done with that property has no legal significance, and cannot properly be a subject of legal inquiry, unless such will be duly declared by him in his last will and testament.

Moreover, the view which I have been controverting is as inconvenient in practice as it is wrong in principle; for it often happens that an agreement or direction to lay out money in the purchase of land, and to settle the land, is never in fact performed, not because of any unwillingness or refusal to perform it, but because no one desires or cares to have it performed, and accordingly the money not being laid out in the purchase of land is invested in some other mode, and remains so invested, and no question ever arises in regard to the conversion covenanted or directed to be made, unless some person, perhaps fifty years after the covenant was made or the direction given, finds it for his interest to claim that the money is still converted in equity into land, and, if it so happens, the question is likely to depend, according to the doctrine in question, upon whether there has been an election not to have the conversion made, and that again is likely to depend upon what is the true inference to be drawn from a long course of conduct, the person whose conduct thus becomes the subject of inquiry, if still alive having probably forgotten, if he ever knew, that such a covenant was ever made or such a direction ever given; and such an inquiry is likely to be not only very vexatious and troublesome as well as very expensive, but also very fruitless, so far as regards the ascertainment of truth. Indeed, those who have the misfortune to be involved in a litigation upon such a question

will generally find it for their mutual interest, whatever may be the value of the property involved, to decide the question by drawing lots.

There is, however, one class of cases in which it is agreed by all that there will cease to be any equitable conversion, though the actual conversion covenanted or directed to be made has not been made, and though there has been no election not to have it made, namely, where the absolute owner of money which has been converted in equity into land has the money in his own hands,—in which case the money is said to be *at home*;¹ and it seems not to be material whether he has possession of the money in his own right or as executor only. Moreover, it seems not to be indispensably necessary that he should be entitled to have the land conveyed to him in fee simple absolute, for, though he be entitled only to have it conveyed to him for his life, with remainder to him in fee simple absolute, and though these limitations in his favor are liable to open and let in a limitation in tail to any son of his who shall hereafter be born, for, if he get the money into his own hands, even as executor, it seems that the equitable conversion of the money into land will be suspended until he shall have a son, and, if he die without ever having had a son, the equitable conversion will never revive, and the money will devolve, at his death, as money. Both these points are illustrated by the great case of *Pultney v. Darlington*,² in which Sir John Scott, Attorney-General, Mr. Charles Fearne, and Mr. W. Dundas struggled valiantly, but unsuccessfully, to reverse Lord Thurlow. In that case Henry Guy, who died in 1710, directed his executors to lay out the residue of his personal estate in the purchase of land, and to settle the land on William Pultney, afterwards Earl of Bath, for life, remainder to his first and other sons successively in tail male, remainder to Harry Pultney, brother of William, and his first and other sons in like manner, remainder to Daniel Pultney, a cousin of William and Harry, and his first and other sons in like manner, remainder to the father of William and Harry in fee. The father died in 1715, whereupon his right under the will to have the land conveyed to him in remainder in fee passed to William Pultney, his eldest son and heir.³ In 1731 Daniel Pultney died without issue male. In

¹ *Lechmere v. Earl of Carlisle*, 3 P. Wms. 211, 224; *In re Gordon*, 6 Ch. D. 531, 535, 537, *per* Sir G. Jessell, M. R.

² 1 Bro. C. C. 223, 7 Bro. P. C., Tomlin's ed. 530.

³ It has always been assumed that this remainder in fee descended, on the deaths

1764 the Earl of Bath died without issue male, whereupon his right to said remainder in fee passed to said Harry Pultney, his brother and heir. On the death of the Earl of Bath, therefore, Harry Pultney was entitled, upon the facts which have been stated, to have the residue of Henry Guy's personal estate laid out in the purchase of land, and to have the land conveyed to him for life, remainder to him in fee. He was not, however, even to the last moment of his life, entitled to have the money paid over to him, for if land had been purchased and settled, the two limitations in his favor, as above, would have been liable to open and let in limitations in favor of his sons; for, though he was about eighty-six years old and a bachelor, yet in legal contemplation it was possible that he should marry and have sons; and, though in fact he did neither, yet, upon the facts thus far stated, the equitable conversion of the money into land remained in force till his death, and on his death his rights under the will of Henry Guy devolved as land. There was, however, another material fact, for the Earl of Bath was executor of Henry Guy, and Harry Pultney was the executor of the Earl of Bath, and by consequence executor of Henry Guy, and therefore, on the death of the Earl of Bath, the money was *at home*, and so remained till the death of Harry Pultney, when it devolved as money; and yet there had been no election not to have an actual conversion made, and could have been none, Harry Pultney not being the absolute owner of the property.¹

How may an equitable conversion of land into money, not caused by a bilateral contract for the purchase and sale of land, be brought to an end without an actual conversion? Such an equitable conversion is generally caused by a direction in a will to sell land and divide the proceeds of the sale among persons designated by the testator; and it is plain that in such a case there will seldom be any unnecessary delay in making a sale, as the interest of each of the persons designated by the testator will be likely to be promoted by a sale. If, however, in any given case all the persons designated by the testator shall be of one mind in preferring the land to

of its respective owners, to their respective heirs, as stated in the text. On principle, however, it seems that the equitable conversion caused by the will of Henry Guy did not extend to the ultimate interest limited to the father of William and Harry Pultney, and therefore that ultimate interest ought to have devolved as money. See *supra*, pp. 324-325.

¹ The decision of the House of Lords was made in 1796, eighty-six years after the death of Henry Guy, when the residue of his personal estate was still personal estate in fact and had not lost its identity.

the proceeds of its sale, they may, if of full age and *sui juris*, require the land to be conveyed to them, and thus put an end to the equitable conversion. So if, in any given case, the number of persons entitled to share in the proceeds of a sale of the land shall, by death or otherwise, be reduced to one before any sale of the land is made, a consequence will be that that one will be, in equity, the sole owner of the land in fee simple, and hence if the equitable conversion still exists it will be because he has not elected to take the land instead of the proceeds of its sale, and the courts, as we have seen, say it does still exist, notwithstanding the oddity of saying that land of which one person is the sole and absolute owner must be treated as converted in equity into money until such owner has elected not to have it actually converted into money pursuant to the direction of a deceased person whose direction has ceased to have any force whatever.

Here ends all that I propose to trouble the reader with on the subject of the indirect conversion of money into land and land into money.

C. C. Langdell.

CAMBRIDGE, October, 1905.